

July 13, 2018

Mr. John Canoles
Eco-Science Professionals, Inc.
P.O. Box 5006
Glen Arm, MD 21057

Re: Castanea Lot 10
Forest Conservation Variance
Tracking # 02-18-2753

Dear Mr. Canoles:

A request for a variance from the Baltimore County Code Article 33, Title 6 Forest Conservation was received by this Department of Environmental Protection and Sustainability (EPS) on July 3, 2018. This request would allow removal of one of four specimen trees on lot 10 of the Castanea subdivision in order to develop that lot. The specimen trees on this lot were addressed in the December 6, 2017 specimen tree variance, but the house and septic reserve area locations on lot 10 have since been shifted. This caused the 31-inch white pine in good condition previously approved for removal to now be retained and a 50-inch DBH silver maple in poor condition previously intended to remain to now be removed. All of the specimen trees on this lot are outside of forest and the Forest Buffer Easement on the development.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of this property. The petitioner is seeking to develop one of the 40 residential estate lots. Requiring retention of all specimen trees on this lot would preclude the development due to their distribution across the lot and the design constraints posed by siting septic reserve and well areas. Therefore, denying the variance would deprive the petitioner of all beneficial use of the property. Consequently, we find that this criterion has been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The petitioner's plight in removing the specimen tree is due to unique circumstances associated with its location relative to the buildable area rather than general conditions in the neighborhood. Therefore, we find the second criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. Granting the variance would allow the development of Lot 10 with a house consistent with the character of the neighborhood. Therefore, we find that granting the variance will not alter the essential character of the neighborhood; thus, this criterion has been met.

The fourth criterion (Subsection 33-6-116(e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The specimen tree is not within the recorded Forest Buffer Easement onsite, and no forest clearing is proposed to develop the lot. Therefore, we find that granting the variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116(e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. This variance is necessitated by the location of the specimen trees relative to the buildable area on the lot rather than a condition or circumstance resulting from actions by the petitioner. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Allowing removal of one specimen tree would be consistent with the spirit and intent of the Forest Conservation Law given that no forest would be impacted, the specimen now being retained is in good condition compared to the one in poor condition now proposed for removal, and the site plan was redesigned to retain the three other specimen trees present. Therefore, we find that this criterion has been met.

Based on our review, this Department finds that all required criteria have been met. Therefore, the requested variance is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. All measures specified on the approved FCP to protect the specimen trees to remain shall be installed prior to EPS approval of any permit for the associated site work.
2. The final forest conservation plan (FCP) shall be revised to reflect the terms of this variance and approved by EPS prior to building permit issuance for lot 10.
3. A note must be on the plan accompanying any permit application stating:

“A special variance to the Forest Conservation Law was granted by Baltimore County Dept. of Environmental Protection & Sustainability on July 13, 2018 to allow the removal of one specimen tree. Conditions were placed on this approval to ensure protection of the remaining forest resources onsite.”

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It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement below and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If there are any questions regarding this correspondence, please contact Mr. Glenn Shaffer at (410) 887-3980.

Sincerely,

David V. Lykens
Deputy Director

DVL/ges

c. Mr. Daniel Hirshfield, CR Golf Club, LLC
Ms. Marian Honeczy, Maryland Department of Natural Resources

I/we agree to the above conditions to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

Responsible Party's Signature

Date

Responsible Party's Printed Name

S/glenn/Castanea Lot 10 FCV-A 7.13.18.docx